

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

BALANCECXI, INC. *d/b/a*
ZACOUSTIC,

Plaintiff,

v.

INTERNATIONAL CONSULTING &
RESEARCH GROUP, LLC, et. al.,

Defendants.

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1:19-CV-767-RP

ORDER

Before the Court is the report and recommendation of United States Magistrate Andrew Austin concerning Plaintiff BalanceCXI, Inc. d/b/a Zacoustic’s (“Plaintiff”) Motion for Rule 37(b) Discovery Sanctions, (Dkt. 66), and all related briefing. (R. & R., Dkt. 98). In his report and recommendation, Judge Austin recommended granting Plaintiff’s motion for sanctions. (*Id.* at 29). Judge Austin also recommended that the Court enter default judgment as to liability against Defendants Christopher DeSimone and Adam Oldfield (together with International Consulting & Research Group, LLC “Defendants”) as to Counts 2, 5, 6, and 7 of the complaint, (Dkt. 1), and order Defendants DeSimone and Oldfield to, jointly and severally, pay Plaintiff the attorneys’ fees and expenses it incurred in filing and arguing its motion to compel, (Dkt. 12) and the instant motion (Dkt. 66), and direct the parties to comply with Local Court Rule CV-7(j) to identify those fees, starting with Plaintiff submitting its application or the parties’ agreement within 14 days of the date of this order (R & R, Dkt. 98, at 29). Defendants timely filed objections to the report and recommendation. (Objs., Dkts., 107–108)

A party may serve and file specific, written objections to a magistrate judge’s findings and recommendations within fourteen days after being served with a copy of the report and

recommendation and, in doing so, secure *de novo* review by the district court. 28 U.S.C.

§ 636(b)(1)(C). Because Defendants timely objected to the report and recommendation, the Court reviews the report and recommendation *de novo*. Having done so, the Court overrules Defendants' objections and adopts the report and recommendation as its own order.

Accordingly, the Court **ORDERS** that the report and recommendation of United States Magistrate Judge Andrew Austin, (Dkt. 98), is **ADOPTED**.

IT IS ORDERED that Plaintiff's Motion for Rule 37(b) Discovery Sanctions, (Dkt. 66), is **GRANTED**.

IT IS FURTHER ORDERED that Defendants DeSimone and Oldfield shall, jointly and severally, pay Plaintiff the attorneys' fees and expenses it incurred in filing and arguing the Motion to Compel, (Dkt. 12), and the instant Motion for Rule 37(b) Discovery Sanctions, (Dkt. 66). The parties shall comply with Local Court Rule CV-7(j) to identify those fees, starting with Plaintiff submitting its application or the parties' agreement within 14 days of the date of this order.

IT IS FINALLY ORDERED that default judgment is entered as to liability against Defendants Christopher DeSimone and Adam Oldfield on Counts 2, 5, 6, and 7 of the complaint.

SIGNED on February 1, 2021.



ROBERT PITMAN
UNITED STATES DISTRICT JUDGE